

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JACK VINCENT JOHNSON,

Plaintiff,

v.

Case No. 03-C-967

MATTHEW J. FRANK, DAVID BURNETT,
SHARON ZUNKER, GEORGE M. DALEY,
JAMES LABELLE, SHERI HEINZ,
JAMES R. WONG, KERIN F. SIRIN,
GARY BRIDGEWATER, ENRIQUE LUY,
UNKNOWN EMPLOYEES OF WDOC,
ADMINISTRATOR OF UNIVERSITY
WISCONSIN HOSPITALS & CLINICS,
MICHAEL LUCEY, DAVID MAHVI and
PATRICE KENNEDY,

Defendants.

OPINION AND ORDER

The Court of Appeals for the Seventh Circuit remanded this action to this court to determine whether the Plaintiff should be granted relief under Federal Rule of Appellate Procedure 4(a)(6), which provides that:

(6) Remanding the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

The Plaintiff has moved to reopen the time to file a notice of appeal. He claims that he did not receive a copy of the judgment dismissing his civil rights case until three months after judgment was entered. See Federal Rule of Civil Procedure 77(d). The Defendants oppose the motion on the grounds that: (1) the Plaintiff is not telling the truth about not receiving a timely copy of the judgment, and (2) the Defendants would be “severely prejudiced.”

On the basis of this record, the court cannot find that the Plaintiff is not credible and the Defendants have not explained how they would be prejudiced. The court finds that the Plaintiff did not receive notice of the entry of judgment within twenty-one days after entry; that he filed his motion to reopen within 180 days after judgment was entered; and, that there is nothing in the record to show that any party would be prejudiced if the time to appeal is reopened. Therefore, the court ORDERS that the Plaintiff’s motion to reopen the time to file an appeal (filed January 23, 2006) IS GRANTED. See Federal Rule of Appellate Procedure 4(a)(6).

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin, this 26th day of April, 2006.

s/ Thomas J. Curran
Thomas J. Curran
United States District Judge